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**THE KASHMIR QUESTION**

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THE KASHMIR CRISIS

A. ORIGIN

Upon achieving full independence on 15 August 1947, India and Pakistan both were subjected to a variety of conflicts largely arising from historical animosity between the Hindus and the Sikhs, on the one hand, and the Moslems, on the other. Both sides were dissatisfied with the delimitation of their boundaries established by the Sir Cyril Radcliffe Boundary Commission. Communal differences—based on religious and cultural differences and political and economic disagreements, as well as dissatisfaction with the boundaries—grew in intensity after the achievement of independence. The strain in relations was worsened by broken agreements between the two Dominions; agreements, for example, with respect to the division of the financial assets and liabilities, or the former, pre-partition, Government of India, its armed forces and military stores.

Of all these differences, the greatest by far was the question of the accession, to one Dominion or the other, of the princely states. These were not partitioned or allocated under the Indian Independence Act. Their previous connection with the British Crown was terminated but the Act made no reference to their future status. It was generally expected that they would accede to one Dominion or the other on the basis of Hindu-Sikh or Moslem population and geographic contiguity, but this was not stated in the Act.

In general, the expectation was fulfilled, but there were a few notable exceptions:

1. Junagadh and Junaydar

a. Junagadh and the smaller states feudatory to it on the Kathiawar Peninsula. Junagadh was (and is) populated by a largely non-Moslem population but the ruler was a Moslem. He acceded to Pakistan. This was not recognized by India, which sent troops to the area. Several Junagadh villages were occupied and a provisional government-in-exile was formed in Bombay, India. Early in October 1947, two months after partition, the ruler and Prime Minister fled to Karachi and India was asked by the remaining Ministers to assist them in the maintenance of law and order. India agreed to do so and, in due course, took over the administration of Junagadh.

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b. Mianwadar was another example of the States primarily occupied by Hindus but ruled by a Moslem. The State acceded to Pakistan. India sent in troops, alleging that the non-Moslem population was under threat of terroristic attack by Moslem refugees coming from India. Under Indian surveillance the Moslem ruler was removed from the State.

2. Hyderabad. Here again, a population largely non-Moslem, was governed by a Moslem ruler, the vastly wealthy Nizam. The ruler refused to accede to India in spite of the fact that the population of the State was so largely Hindu and the additional fact that Hyderabad was completely surrounded by Indian territory. In accordance with a cease-fire agreement between the State and India, concluded in November 1947, responsibility for defense and foreign affairs was assumed by the Indian Union. In due course, Indian troops entered the State in what was described as a "police action." With a population largely Hindu, and, by this time, with an Indian-controlled administration, in November 1949 the Nizam acceded to India.

3. Fourth, and longest-lasting, of the exceptions to the general expectation referred to, was the State of Jammu and Kashmir. The State is divided to this day, more than 11 years later, and the issue has been almost ceaselessly debated before the United Nations Security Council.

The State of Jammu and Kashmir was inhabited by a mixed but largely Moslem population. The Maharajah was a Hindu. He approached both Dominions with the object of concluding cease-fire agreements so that certain administrative agreements between the pre-partition Government of India and the Government of Kashmir might be continued. This was not possible in the case of India. An agreement was, however, concluded between Pakistan and Kashmir whereby certain administrative arrangements concerning communications and other services would be continued.

#### B. HOSTILITIES

Because of a fear that Kashmir would accede to India, Moslem inhabitants of Mirpur and Poonch districts in Jammu revolted against the Maharajah in August 1947 after partition. State forces of Jammu and Kashmir were sent to quell the rebellion. By September, there began incursions of the Kashmir border by tribesmen from the Northwest Frontier Province of Pakistan. By the end of September, Sheikh Abdullah, Moslem President of the pro-Indian Kashmir National Conference and a friend of Nehru's, was released from jail. An "azad" (free) Kashmir

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National Government, opposing accession to India and wholly Moslem, was, however, formed in opposition to the Hindu Maharajah.

Toward the end of October, even larger numbers of tribesmen from the Northwest Frontier Province crossed the border and advanced upon the summer capital of Kashmir, Srinagar. At about this time Moslem units of the army and police forces of Jammu and Kashmir deserted, several petty states to the Northwest broke with Jammu and Kashmir and acceded to Pakistan. Troops from the embryo regular army of Pakistan joined in. On the 26th of October, the Maharajah of Jammu and Kashmir, Sir Hari Singh, acceded to India. In his letter to Lord Mountbatten, the Governor-General of India, he said:

"with the conditions obtaining at present in my State and the great emergency of the present situation as it exists, I have no option but to ask for help from the Indian Dominion. Naturally they cannot send the help asked for by me without my State acceding to the Dominion of India. I have accordingly decided to do so, and I attach the instrument of accession for acceptance by your Government."

The Indians, after two visits to the Maharajah in Srinagar by Mr. V.P. Menon, decided to send troops in from New Delhi. The Indian airlift, as a military operation, was an outstanding success. The troops reached Srinagar just in time. They went directly into action from the airport.

For months the fighting continued, with neither side succeeding in gaining a decisive victory over the other. India managed to gain control over the Vale of Kashmir, while the Pakistanis held on to their control over the "Aeas" area in the northwestern part of the State. A statement by Nehru in a broadcast of 2 November has since become the subject of acrimonious dispute: "we are prepared when peace and law and order have been established to have a referendum in Kashmir under international auspices."

On 30 December 1948, General Barker, Commander-in-Chief of the Indian forces, proposed to General Gracey, Commander-in-Chief of the Pakistanis, that a cease-fire, effective on both sides in their present position, be effected. General Gracey agreed and on 1 January, 1949, the cease-fire went into effect.

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C. THE UNITED NATIONS

On 1 January 1948, India submitted a memorandum to the United Nations Security Council in which the Council was requested to call upon the Pakistan Government to: (1) prevent its personnel, civilian or military, from participating in or assisting the State of Jammu and Kashmir; (2) call upon its nationals to desist from taking any part in the fighting; (3) deny to the invaders military and other supplies, and all other kinds of aid which might tend to prolong the struggle, and use of the territory of Pakistan for operations against Kashmir.

In rebuttal, the Foreign Minister of Pakistan stated that the issues could not be considered in isolation and that: (1) the present conflict had its origin in the events in the Punjab (presumably the initial uprising against the Maharajah's rule) and in the Indian attitude towards the accession of Junagadh and other States to Pakistan; (2) a pre-planned and extensive campaign of genocide had been carried out in India; (3) India had never wholeheartedly accepted partition and since June 1947 had been making persistent efforts to undo it; (4) India had obtained the accession of Kashmir by fraud and violence.

The viewpoint of members of the Security Council indicated that their primary objective was the expulsion of the "raiders" from Kashmir and the prompt cessation of hostilities. The attitude of the Indians was rejected. The members felt that holding a plebiscite, organized and supervised by an international commission, was of the first importance. One of its early resolutions established the United Nations Commission for India and Pakistan (UNCIP). Members of UNCIP were: Colombia, Belgium, Argentina, Czechoslovakia and the United States. The UNCIP Commission was to proceed to the area and offer its good offices and mediation to India and Pakistan both for the restoration of peace and good order and for the holding of a plebiscite. Provision was also made for the appointment of a Plebiscite Administrator.

According to the Indian representative, insufficient consideration was given by the Council to the continuing breach of international obligations by Pakistan, and India's obligation with respect to the defense of Kashmir was emphasized. From the beginning the viewpoint of the Council has differed from that expressed by the Indian representative on: (1) the legal sanction behind the government of Kashmir; (2) the validity of the state's accession to India; (3) Pakistan's "aggression" in Kashmir;

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(4) the United Nations role in the organization and conduct of a plebiscite. The UNCLP Commission was directed to study and report to the Council on other questions, namely: the secession of Junagadh, genocide, and the non-implementation by India and Pakistan of financial and military agreements.

UNCLP, on 13 August 1948, submitted to the two governments recommendations for a cease-fire, a truce agreement, and a plebiscite to determine the future status of Kashmir. As a basis for the truce agreement, the following was suggested: (1) the government of Pakistan was to "withdraw its troops" and "use its best endeavor" to secure the withdrawal of tribemen and Pakistani nationals not normally resident in the area. (2) "Pending a final solution," the territory evacuated by Pakistani troops was to be "administered by the local authorities under the surveillance of the Commission." (3) After the Commission notified the government of India that tribemen and Pakistani nationals had withdrawn, the government of India would agree to withdraw the bulk of its forces from the State "in stages to be agreed upon with the Commission." (4) The government of India would maintain "within lines existing at the moment of the cease-fire, the minimum strength of its forces which, in agreement with the Commission," were considered necessary "to assist the local authorities in the observance of law and order."

After obtaining clarification of certain points, India accepted the proposals. Pakistan expressed reservations with respect to organization of the plebiscite. UNCLP again made proposals with the object of seeking agreement between the two parties on the conduct of a plebiscite. Both parties accepted. As has been stated, the orders for a cease-fire became effective 1 January 1949. A formal resolution embodying UNCLP's plebiscite proposals followed four days later.

In spite of the fact that these proposals were accepted by both governments, they could not be implemented because of differences with regard to their interpretation.

UNCLP assured the government of India that the powers and functions of the Plebiscite Administrator would be limited to ensuring that the plebiscite would be free and impartial; that Pakistan would first withdraw its forces; and that there should be a large-scale disarmament of the "Azad" Kashmir forces. UNCLP did not give clear and definite replies to the questions raised by India in regard to the possibility of the entry of unauthorized persons into the State and to the raising of fanatical slogans like "Islam in danger" by pro-Pakistani elements.

On 10 January 1948, a Pakistani Government committee claimed that UNCIP did not contemplate the disarmament or disbandment of the forces of the local authorities, who would exercise control over any elements of the armed forces of Pakistan in their territory. The proposal that Pakistan withdraw its armed forces from Kashmir was accepted, but Pakistan insisted that the Indian forces to be maintained in the State during the truce period be only the minimum necessary to maintain internal order.

UNCIP proposed new truce terms and, in its final report to the Security Council proposed, among other things, that a single representative of the Council be appointed to settle the problem. In due course, Sir Owen Dixon was named.

After surveying the area, Dixon (an Australian jurist) made a number of proposals, whose chief concern was with the conduct of the plebiscite. India rejected the proposals. Dixon then asserted that the only chance of settlement lay in partition.

For a long time, there the matter rested. Subsequently, Dr. Frank Graham of the United Nations was appointed to succeed Dixon. Dr. Graham made a series of reports, fruitlessly, at the end of which, in April 1952, he stated: "...the narrowing of the differences...to one main point, upon which the whole plan depends, emphasizes the depth of the difference on this point...It is related to the differing conceptions of the two Governments...relating to first, the status of the State of Jammu and Kashmir, secondly, the nature of the responsible authorities on each side of the cease-fire line after demilitarization, and thirdly, the obligations of the two governments under the two resolutions of 13 August 1948 and of 5 January 1949." His further efforts were equally without result.

The heart of the problem appears to be the fundamental disagreement between India and Pakistan on the origin of the problem and the proper role of the United Nations in its solution. India contends that the original accession of the Kashmir Government to India is legal and this means that, in regard to the plebiscite and demilitarization, India has certain responsibilities and powers which Pakistan does not have. According to this view, Pakistan committed an act of aggression when it allowed its tribesmen and its nationals to invade Kashmir.

The problem continued into 1958. After direct negotiations between the two Prime Ministers had failed, Dr. Frank Graham was again sent to the area to seek a solution. As generally expected, his journey was again fruitless. It has been suggested that Sir Owen Dixon's proposal of partition should not

be ruled out. What is important, perhaps, is that the ultimate solution should be acceptable to both parties. There is no doubt, however, that to find such a solution some re-thinking of various issues by both governments will be necessary.

Efforts were made in 1958 from the Pakistani side to violate the cease-fire line. Prominent in these efforts were Ghulam Abbas, radical leader of "Azad" Kashmir, and Sardar Mohammed Ibrahim Khan, President of "Azad" Kashmir. The governments of both India and Pakistan strongly discouraged these efforts and, although there was considerable agitation and a few of the "agitators" succeeded in crossing the line, the efforts were not successful.

The Indian *Newspaper* stated that President Nizam is "known to hold very practical views on Indo-Pakistani problems and has expressed in private a sincere desire for removal of obstacles to friendly relations between the two neighboring countries." Perhaps the new Pakistani regime will in due course show enough stability and authority to negotiate with India. Lack of this has blocked previous efforts to make any useful negotiations result in any real progress.

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ANNEX I

THE CANAL WATERS DISPUTE

Possibly an even greater question than that of the sovereignty of Kashmir is the dispute over the rivers which flow westward into Pakistan from the territory of Jammu and Kashmir. These rivers are the lifeblood of West Punjab by way of its intricate canal system, but they are also a vital life source for additional millions in West Pakistan.

The Indus River and its tributaries drain nearly all of Kashmir, except for some areas in the Northeast that have interior drainage or drain toward China. The Indus, fed by numerous mountain streams, flows from Tibet northeastward across Kashmir between the Karakorum Range and the Great Himalayan. In the northwest it cuts sharply through the mountains to flow in a southwesterly direction toward the plains of West Pakistan. Three major left-bank tributaries, the Jhelum, Chenab, and Ravi, which drain Southwest Kashmir, converge and join the Indus in West Pakistan. The Jhelum River, draining the Vale of Kashmir, is perhaps Pakistan's most important river economically, since the lives of so many millions of people are dependent upon it. The waters of the two other rivers, the Sutlej and the Beas, flowing from India, also join the Indus in West Pakistan. The period of high water is from June through September, when most large rivers in these parts carry as much as 15 times their low-water volume.

In the undivided Punjab under British rule, 25 million arid acres were brought under irrigation--four times the area irrigated from the Nile--by 13 complex canal systems. Ten of these systems, using 85 percent of the irrigation water, fell upon the Pakistan side upon partition and nearly all of them flow from India or from Indian-held Kashmir. Pakistan's fear of the terrible famine that would follow the cutting off of access to these waters led, in 1951, to her accepting the good offices of the International Bank for Reconstruction and Development (IBRD). The problem has still not been solved and, like the Security Council and the Kashmir question, the IBRD remains "seized" of the problem to this day.

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